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**FILED/ACCEPTED**

**APR 18 2007**

Federal Communications Commission  
Office of the Secretary

April 18, 2007

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

*Re: Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, WC Docket No. 06-172*

Dear Ms. Dortch:

Enclosed are Verizon's Reply Comments and supporting materials in the above-captioned matter ("Reply").

These Reply Comments and supporting material contain Confidential Information and Highly Confidential Information. Confidential Information has been marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" in accordance with the First Protective Order in this proceeding.<sup>1</sup> Highly Confidential Information has been marked "HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO.

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<sup>1</sup> *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, Order ¶ 5, WC Docket No. 06-172, DA 06-1870 (rel. Sept. 14, 2006) ("First Protective Order")*.

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06-172 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION” in accordance with the Second Protective Order in this proceeding.<sup>2</sup>

In accordance with the Second Protective Order<sup>3</sup> and discussions with staff of the Wireline Competition Bureau, Verizon is submitting for filing:

- a. One copy of the Highly Confidential Reply (in paper form); and
- b. Four copies of the Redacted Reply (in paper form).

Verizon is delivering under separate cover:

- a. Two copies of the Highly Confidential Reply (in paper form) to Gary Remondino;
- b. Six copies of the Highly Confidential Reply (in paper form and in electronic form) to Tim Stelzig;
- c. One copy of the Highly Confidential Reply (in electronic form) to Jeremy Miller;
- d. Two copies of the Redacted Reply (in paper form) to Janice Myles;
- e. One copy of the Redacted Reply (in paper form and in electronic form) to Tim Stelzig; and
- f. One copy of the Redacted Reply (in paper form) to Best Copy and Printing.

All inquiries relating to access (subject to the terms of the applicable protective orders) to any confidential information submitted in this Reply should be addressed to:

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<sup>2</sup> *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Order ¶ 5, WC Docket No. 06-172, DA 07-208 (rel. Jan. 25, 2007) (“*Second Protective Order*”).

<sup>3</sup> *Second Protective Order* ¶ 15.

Marlene H. Dortch

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We are also tendering to **you** certain copies of this letter ~~for~~ date-stamping purposes. Please date-stamp **and** return these materials.

Thank you for your assistance in **this** matter. If you have any questions, please call me at 703-351-3065.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sherry A. Ingram". The signature is fluid and cursive, with the first name "Sherry" being more prominent.

Sherry A. Ingram

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION **FILED/ACCEPTED**  
Washington, D.C. 20554

**APR 18 2007**

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
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Petitions of the Verizon Telephone )  
Companies for Forbearance Pursuant to )  
47 U.S.C. § 160(c) in the ) WC Docket No. 06-172  
 )  
Boston, New York, Philadelphia, )  
Pittsburgh, Providence and Virginia Beach )  
Metropolitan Statistical Areas )

**REPLY COMMENTS OF VERIZON**

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April 18, 2007

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### ATTACHMENTS

Attachment A:	Verizon's Submission of E911 Listings Data in Regulatory Proceedings Does Not Violate State Laws
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## REPLY COMMENTS OF VERIZON

### I. INTRODUCTION AND SUMMARY

The Commission should grant Verizon's forbearance petitions in each of the six Metropolitan Statistical Areas ("MSAs") – New York, Boston, Philadelphia, Pittsburgh, Providence, and Virginia Beach. In each of these MSAs, Verizon has requested substantially the same regulatory relief the Commission granted in the *Omaha Forbearance Order*, which the D.C. Circuit has upheld. Verizon's petitions demonstrate – and these reply comments further confirm – that in each of the six MSAs competition is even more advanced than it was in Omaha with respect to both mass-market and enterprise customers. As in Omaha, therefore, the Commission should find that "market forces will protect the interests of consumers" and that the regulations at issue are no longer necessary. *Omaha Forbearance Order* ¶ 1.

**Mass Market.** Throughout each of the six MSAs, mass-market consumers have access to a wide range of competitive alternatives for affordable local telephone service. As was the case in Omaha, cable operators offer competitive voice services to the vast majority of homes in each of the **six** MSAs, and the comments of cable operators here confirm that fact. The data provided with these reply comments further show that the use of cable voice services is growing rapidly. For example, between December 2005 and December 2006, the number of residential E911 listings that cable operators have obtained grew by [Begin Confidential]

[End Confidential]. Even in

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the MSAs for which Veriron does not have full data (Pittsburgh, Providence, and Virginia Beach), there was growth based on the limited data that Verizon does have.

Several commenters complain that Verizon has failed to provide the same level of wire center detail on which the Commission relied in the *Omaha Forbearance Order*. As an initial matter, the commenters fail to acknowledge that the Commission there performed a wire-center-level analysis only with respect to forbearance from loop and transport unbundling regulations, and granted forbearance from dominant-carrier regulations on an MSA-wide basis. Given that competition in the **six** MSAs here is even greater than in Omaha, the Commission would be justified not only in granting MSA-wide relief with respect to dominant-camer regulation, but also in extending this approach to loop and transport unbundling. Moreover, the key data that the Commission used to conduct a wire-center-level analysis in Omaha were provided by cable operators themselves and are not the type of data to which Verizon has access, which highlights the need for the Commission to demand that competing carriers provide comparable data here.

In any event, Verizon's petitions did contain certain wire center detail – such as the percentage of Verizon's lines in wire centers where cable companies and other competitors appear to be serving customers – and these comments provide additional data at the wire-center level. This wire center detail confirms that cable competition is widespread in each of the six MSAs. As of December 2006, cable operators were providing service to residential customers in **[Begin Highly Confidential]**

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[End Highly

**Confidential)** These data also show that cable operators are serving wire centers that contain an even higher percentage of Verizon's residential switched access lines – **[Begin Highly Confidential]**

[End Highly

**Confidential]**

Some commenters also take issue with the Commission's prior holdings that widespread competition from cable is sufficient by itself to justify the forbearance sought here. But cable operators have ubiquitous facilities and are winning thousands of customers each week from Verizon. As the D.C. Circuit recently found, this is a sufficient basis to justify forbearance.

These reply comments further demonstrate that other types of mass-market competition, including wireless and over-the-top VoIP services, also are more advanced in the six MSAs than they were in Omaha. In each of the six **MSAs**, there are multiple wireless carriers and over-the-top VoIP providers offering service that competes with Verizon's wireline service, and large and increasing numbers of consumers in the six **MSAs** are using these competitive alternatives in place of their wireline service. Each of these three major types of internodal competition has continued to grow rapidly since Verizon filed its petition, and is poised to continue growing rapidly in the future. While some commenters argue that competition from wireless and over-the-top VoIP should be

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ignored because they are not perfect substitutes for Verizon's wireline service in every respect, the Commission has correctly held that different services don't need to be perfect substitutes to provide significant competitive discipline.

**Enterprise.** Enterprise customers in each of the six MSAs likewise have access to a wide range of competitive alternatives. As was the case in Omaha, each of the major cable companies in the six MSAs is capable of using its cable networks to serve enterprise customers and has already begun doing so. The comments of cable operators here and other recent statements by these companies confirm this fact. For example, Cablevision recently told investors that it has "identified over 600,000 businesses inside our footprint that we passed with cable that were serviceable today," using Cablevision's *existing* plant that was originally deployed to serve residential customers.<sup>1</sup> Analysts have similarly found that cable companies can use their existing plant to target more than 85 percent of commercial revenues.

In addition to cable companies, there are a large number of competitive fiber providers in each of the six MSAs, and these providers have deployed fiber in wire centers that account for a significant percentage of Verizon's retail switched business lines in these MSAs (ranging from approximately **[Begin Confidential]**

**[End**

**Confidential]]**). There also is a significant number of competitive providers who

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<sup>1</sup> Thomson Street Events, *CVC – Cablevision Systems Corp. at Banc of America Media. Telecommunications & Entertainment Conference*, Transcript at 7 (Mar. 28, 2007) (statement of Tom Rutledge, COO, Cablevision) ("Cablevision/Rutledge MTE Conf. Tr.").

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compete at the retail level using a combination of their own facilities and those obtained from a third party, including wholesale special access service purchased from Verizon.

To the extent that competing carriers are relying on wholesale facilities from Verizon, they are purchasing those facilities overwhelmingly as special access, rather than as UNEs. As of December 2006, competing carriers as a whole are purchasing between [Begin Confidential] [End Confidential] of DS1s and between [Begin Confidential] [End Confidential] of DS3s from Verizon as special access rather than UNEs in each of the six MSAs.

Between December 2005 and December 2006, the number of business E911 listings that competing carriers have obtained grew by [Begin Confidential]

[End Confidential]. And, once again, even in the MSAs for which Verizon does not have full data (Pittsburgh, Providence, and Virginia Beach), there was growth based on the limited data that Verizon does have.

As of December 2006, competing carriers were serving business customers in [Begin Confidential]

[End Confidential]. These wire centers account for between [Begin Confidential]

[End Confidential] percent of Verizon's switched business access lines in each MSA.

\* \* \*

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Finally, the evidence demonstrates that granting forbearance is in the public interest. As the Commission found in Omaha, the costs of the regulations at issue outweigh any potential benefits. Although some parties claim that forbearance will impede investment, including in broadband infrastructure, marketplace experience demonstrates that unbundling regulation has the opposite effect. Where the Commission has eliminated unbundling, investment and facilities-based competition have thrived. Eliminating dominant-carrier regulation also will advance the public interest by establishing regulatory parity and removing regulations that make it harder for Verizon to respond to competitive pressure.

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**II. THE FIRST TWO PARTS OF THE FORBEARANCE TEST ARE SATISFIED BECAUSE OF THE EXTENSIVE AND RAPIDLY GROWING COMPETITION IN EACH OF THE SIX MSAS**

Verizon's petitions demonstrate that competition in each of the six MSAs is more advanced than it was in the Omaha MSA, and is continuing to grow rapidly. The petitions demonstrate that cable voice services are just as widely available in the six MSAs as they were in the Omaha MSA, for both mass-market and enterprise customers, and that for both types of customers other competitive alternatives are more advanced in each of the six MSAs than they were in Omaha. These comments provide further confirmation of these facts. Verizon is submitting updated data through December 2006 (as compared to December 2005 data used in the petitions), which show that competition has continued to grow in each of the six MSAs. Recent statements of competitors, independent analysts, and other public sources provide further evidence that competition is extensive and increasing.

The vast majority of commenters opposing Verizon's petition are cable operators and competitive local exchange carriers ("CLECs") who are seeking to maintain a competitive advantage by subjecting Verizon to needless regulation. While these parties claim that competition is insufficient to justify forbearance, the sheer volume of competing providers filing comments – approximately *three dozen* in total – is strong evidence to the contrary. And this total does not even include many of the most significant sources of competition in the six MSAs, such as two of the largest wireless carriers (AT&T and T-Mobile), two of the largest cable companies (Cablevision and Charter), a number of the largest CLECs (AT&T, Level 3, and Qwest), and all of the

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major sources of over-the-top VoIP competition (such as Packet8 and Skype, to name just a few).

The competing providers who have filed comments take issue with various aspects of Verizon's showing, but in marked contrast to the comprehensive and detailed evidence that Verizon filed, these commenters submit virtually no data of their own. Of the approximately three dozen competing providers that submitted comments, only two even indicated how many customers or lines they serve in each of the six MSAs they serve. None of the cable operators provided this type of data, or, for that matter, any other data regarding their existing customers, facilities, or capabilities for each of the MSAs they serve. Not a single CLEC has provided comprehensive details about its facilities for each of the MSAs it serves, such as maps of its networks, the locations where it serves end-user customers, and whether it is using its own facilities, other competitive facilities, or special access. This information is unquestionably and uniquely within competitors' possession, but by withholding it the commenters put the Commission in the position of having to evaluate Verizon's petition without access to the most relevant data. These commenters' failure to present probative evidence within their possession, moreover, strongly suggests that they know that the data would undermine their assertions, and their failure to produce it should be construed against them.' In fact, the commenters not only fail to provide their own data, but also argue that the Commission should ignore Verizon's data. The Commission should reject the

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<sup>2</sup> *International Union, UAW v. NLRB*, 459 F.2d 1329, 1336 (D.C. Cir. 1972) (party's failure to produce "relevant evidence within [their] control" "gives rise to an inference that the evidence is unfavorable to [them].").

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commenters' attempt to hide relevant information, and should instead require these parties to produce relevant data of their own.

The commenters' main argument is that competition from cable is insufficient to justify forbearance. But the Commission already rejected that same claim in the *Omaha Forbearance Order*, and the U.S. Court of Appeals for the District of Columbia Circuit has upheld that determination. *See Qwest Corp. v. FCC*, No. 05-1450 (D.C. Cir. Mar. 23, 2007). The Court held that the Commission's decision to grant forbearance with respect to both the mass market and the enterprise market was reasonable, given competition from the incumbent cable operator. The Court explained that, although "Cox's market share was larger in the residential than the enterprise market," it was nonetheless reasonable to conclude that Cox "posed a 'substantial competitive threat. . . ' in both sectors," given that it "had proven itself a 'very successful[]' competitor even in the mass market (where revenue potential was 'relatively low' compared to the enterprise market), was 'actively marketing' itself to enterprise customers, had won over a 'large number of significant . . . businesses," and "had relevant technical expertise, economies of scale and scope, sunk investments in network infrastructure (implying that the incremental costs for continuing and extending service would be relatively modest), and an established presence and brand." *Id.* at 15 (quoting *Omaha Forbearance Order* ¶ 66). The Court further held that it was reasonable for the Commission to rely on its "forecasting [of] an increase in competition." *Id.* at 16. The Court explained that, given data showing cable's "aggressive expansion in both the residential and enterprise markets, we cannot say that

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the possibility of wide variance in existing coverage is enough to undermine the Commission's conclusions." *Id.*

The commenters also make various other arguments that competition is inadequate to justify forbearance. But they provide little or no evidence to substantiate these claims. As demonstrated below, the commenters' claims are misplaced

**A. There Is Extensive Mass-Market Competition in Each of the Six MSAs**

Venzon's petitions demonstrated that mass-market consumers throughout each of the six MSAs have access to affordable local telephone service from cable and wireless networks, dozens of "over-the-top" VoIP providers, and various traditional CLECs. More recent data confirm that these competitive alternatives are both widely available and widely used by consumers in each of the MSAs.<sup>3</sup>

**1. Cable**

Verizon's petitions demonstrated that, in each of the six MSAs, one or more of the major incumbent cable operators serves the majority of the homes in the MSA, that each of the cable operators has stated that it already offers voice service throughout the majority of or all of its service territory, and that each has indicated it will continue to extend service to any areas it does not currently serve.<sup>4</sup> Verizon further demonstrated

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<sup>3</sup> Cf. *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply after Section 272 Sunsets*, Memorandum Opinion and Order, WC Docket No. 05-333, ¶ 20 (rel. Mar. 9, 2007) ("*Qwest 272 Forbearance Order*") ("[I]ntermodal competition between wireline services and services provided on alternative service platforms, such as facilities-based VoIP and mobile wireless, has been increasing and is likely to continue to increase.").

<sup>4</sup> See NY Pet'n at 4-6; NY Decl. ¶¶ 15, 19, 23-24, 26; Boston Pet'n at 4-6; Boston Decl. ¶¶ 14, 18, 20; Phil. Pet'n at 4-6; Phil. Decl. ¶¶ 16, 20; Pitt. Pet'n at 4-6; Pitt. Decl. ¶ 17;

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that data on where these cable companies already serve residential customers – in particular, these companies’ E911 listings – indicate that they are serving residential customers in wire centers that account for an overwhelming majority of Verizon’s residential access lines in the six MSAs.<sup>5</sup>

More recent evidence provides overwhelming proof that cable telephony service is available to virtually all of the homes in each of the six MSAs, just as was the case in Omaha. *See* Lew/Wimsatt/Garzillo Reply Decl. ¶¶ 11, 29-32. Unfortunately, none of the cable operators who filed comments here has provided the detailed data on which the Commission relied in Omaha, and, more recently, in Anchorage. *See Omaha Forbearance Order* ¶ 28; *Anchorage Forbearance Order* ¶ 28. But none of these cable operators disputes Verizon’s statements that these cable operators offer voice service to all or substantially all of the homes in their franchise territories. Moreover, the cable companies confirm that they compete using their own facilities, and not with UNEs.<sup>6</sup>

Comcast – the primary cable operator in the Philadelphia, Pittsburgh, and Boston MSAs, and one of several major cable operators in the Providence and New York MSAs – recently stated that it was offering voice service to approximately 70 percent of its

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Providence Pet’n at 4-5; Providence Decl. ¶¶ 15-16, 18; Va. Beach Pet’n at 4-6; Va. Beach Decl. ¶¶ 15-16.

<sup>5</sup> *See* NY Pet’n at 5; NY Decl. ¶ 28; Boston Pet’n at 5; Boston Decl. ¶ 21; Phil. Pet’n at 5-6; Phil. Decl. ¶ 22; Pitt. Pet’n at 5; Pitt. Decl. ¶ 19; Providence Pet’n at 5; Providence Decl. ¶ 21; Va. Beach Pet’n at 5; Va. Beach Decl. ¶ 18.

<sup>6</sup> *See* Comcast at 1; Time Warner Cable at 20; Cox at 6. These cable operators’ statements that they do not use UNEs answers claims that Verizon failed to provide evidence to establish this fairly obvious point. *See* Broadview *et al.* at 29-30; ACN *et al.* at 43-44.

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footprint as of year-end 2006, and that it would reach approximately 85 percent of its footprint by year-end 2007.<sup>7</sup> Comcast provides no information regarding the availability of its voice services in the five relevant MSAs it serves, but does not dispute any part of Verizon's showing regarding the availability of Comcast's voice services. *See* Comcast at 1-4.

Time Warner Cable also does not provide any detailed information with respect to the one relevant MSA it serves – New York – but concedes here (at 17) that it “has built out facilities enabling the provision of voice service to most households in the portions of the New York MSA in which it operates.” Time Warner Cable also acknowledges (at 10-11) that, collectively, “cable operators have now deployed telephony facilities throughout most of the New York MSA.”

Cox – the largest cable operator in the Virginia Beach and Providence MSAs – has indicated that it provides voice service in all of its markets, and that within each market it provides voice service to the vast majority of homes its network passes.<sup>8</sup> Cox does not provide any detail regarding the two relevant MSAs it serves, but confirms that it offers “local residential and business telephone service in each of its thirty five markets

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<sup>7</sup> Comcast Presentation, Citigroup Entertainment, Media & Telecommunications Conference, at 11 (Jan. 9, 2007) (stating that Comcast Digital Voice was available to “32MM+ Marketable Homes” as of YE06 and would be available to “40MM Marketable Homes” by YE07, as compared to 47 million homes that Comcast passes).

<sup>8</sup> *See* Cox News Release, *Cox Digital Telephone Now Offered in All Cox Markets* (Oct. 30, 2006).

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across eighteen states,” and does not otherwise dispute Verizon’s information about the availability of its voice services. Cox at 1-2.<sup>9</sup>

Cablevision, another one of the major cable operators in the New York MSA, announced more than three years ago that it was providing voice service to *all* of the homes in the New York MSA.<sup>10</sup> Cablevision has not filed comments in this proceeding,

Given this evidence, there is no basis to criticize Verizon for failing to provide data showing the availability of cable voice services within each individual wire center in the six MSAs.<sup>11</sup> The evidence shows that cable voice service already is available to virtually all mass-market customers throughout each of the six MSAs, which makes it unnecessary to perform a more granular analysis.” There is no evidence to suggest that conditions vary significantly across the MSAs at issue here,” and particularly not within

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<sup>9</sup> Although Verizon’s petition estimated (using data from Media Business Corp.) that Cox’s network in Virginia Beach passed approximately 98 percent of homes in the MSA, see Va. Beach Decl. ¶ 15, Cox claims (at 25) that number is slightly overstated and that it serves only [Begin Confidential] [End Confidential] percent of homes in that MSA. While Cox also claims (at 25) that it “does not provide telephone service to every household in every franchise area where it offers cable service,” it fails to quantify the number of homes in the Virginia Beach or Providence MSAs where Cox phone service is unavailable. See Cox at 25-26. This omission speaks for itself.

<sup>10</sup> See NY Pet’n at 5; NY Decl. ¶ 16

<sup>11</sup> See Cox at 17 & n.53; Sprint at 3, 8; NASUCA at 17-18, 39-42; Broadview *et al.* at 16-19, 21-22, 27-28; ACN *et al.* at 15-17, 21; Comptel at 30-31; EarthLink at 50-51; NCTA at 4.

<sup>12</sup> The overwhelming evidence that cable voice services are *already* available throughout the six MSAs also puts the lie to Sprint’s claim (at 9) that Verizon relies on the expectation that cable telephony will be introduced throughout the MSAs, and that this prediction is broader than current reality.

<sup>13</sup> In Omaha, the Commission analyzed competition at the wire-center level only with respect to loop and transport unbundling, but held that for the purposes of analyzing

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the areas served by the major cable operators who serve the vast majority of these MSAs.

*Compare Anchorage Forbearance Order* ¶¶ 15-16.<sup>14</sup> The Commission has held that where competition is fairly uniform across a given geographic area, it is unnecessary to conduct a more granular geographic analysis, even if the identity of particular competitors differs across location. For example, the Commission has held that because competitive choices for interexchange service are fairly uniform nationwide, it should treat the interexchange market as national in scope.<sup>15</sup> The Commission should take the same approach here.

Moreover, the data on which the Commission relied to perform a more granular analysis in the Omaha and Anchorage proceedings were obtained from the cable operators themselves, because only those entities have access to precise information on

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dominant carrier regulation, the relevant geographic area was Qwest's local wireline service area within the MSA. *See Omaha Forbearance Order* ¶ 24.

<sup>14</sup> A few commenters claim that, although the major cable operators serve the vast majority of the MSAs at issue, they do not always serve 100 percent, and Verizon has not demonstrated the availability of cable voice services in the remainder of the MSA. *See NASUCA* at 42; *Cox* at 25-26. But the fact that cable voice service is available to the overwhelming majority of homes in each MSA, as Verizon's petitions demonstrated, provides competitive discipline throughout the MSA. *See NY Decl.* ¶ 14; *Boston Decl.* ¶ 13; *Phil. Decl.* ¶ 14; *Pitt. Decl.* ¶ 15; *Providence Decl.* ¶ 13; *Va. Beach Decl.* ¶ 15. If cable voice is available to such a large percentage of homes, it clearly can be made available to the rest, and the prospect of this occurring prevents Verizon from increasing prices to any customers without access to cable voice services, even assuming Verizon could identify such locations.

<sup>15</sup> *See, e.g., Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, ¶¶ 66-67 (1997); *Motion of AT&T Corp. To Be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, ¶ 22 (1995) ("*AT&T Non-Dominance Order*").

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the availability of their voice services. *See Anchorage Forbearance Order* ¶ 28; *Omaha Forbearance Order* ¶ 28. The fact that these companies chose not to provide this information here – despite their knowledge that the Commission has requested these data in the past – is strong evidence that these data would be unfavorable to them.” To the extent the Commission believes it needs this data to evaluate Verizon’s request – which, as explained above, it does not – it should require the cable companies to produce it.

In any event, Verizon is providing here more granular data that confirm that cable voice services are widely available both at the MSA level, and also at the wire-center level. According to the residential E911 listings cable companies have obtained as of the end of December 2006,<sup>17</sup> cable companies are providing voice service to residential customers in [Begin Highly Confidential] [End Highly Confidential] percent of the wire centers in each of the six MSAs. *See* Table 1; Lew/Wimsatt/Garzillo Reply Decl. ¶ 11, Table 4. These wire centers account for at least [Begin Highly Confidential]

[End Highly Confidential] percent of Verizon’s residential access lines in the six MSAs. *See* Table 2; Lew/Wimsatt/Garzillo Reply Decl. ¶ 11, Table 5.<sup>18</sup> Exhibits 3.A-

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<sup>16</sup> *See International Union*, 459 F.2d at 1336

<sup>17</sup> As explained previously and in the Lew/Wimsatt/Garzillo Reply Declaration, these data understate the existence of competition in the Pittsburgh, Providence, and Virginia Beach MSAs because Verizon is no longer the E911 provider in parts of these MSAs. *See* Lew/Wimsatt/Garzillo Reply Decl. ¶¶ 7-9.

<sup>18</sup> As Verizon has previously explained, some of these figures are presented as a range because Verizon’s data do not in all cases allow an E911 listing to be associated with a specific wire center. The low end of the range is based on the E911 listings that can be directly attributed to a specific wire center (because there is only one wire center associated with the NPA-NXX code for the E911 listing), and therefore represents the minimum number of wire centers (and associated access lines) in which competing carriers are providing service. The high end of the range is derived by applying an

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3.F to the attached Lew/Wimsatt/Garzillo Reply Declaration contain the wire-center-level detail supporting these calculations.

**[Begin Highly Confidential]**

**[End Highly Confidential]**

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allocation methodology to those **E911** listings that cannot be directly attributed to a specific wire center (because there is more than one possible wire center associated with the NPA-NXX code for the **E911** listing). This methodology proportionally assigns **E911** listings to each of the possible wire centers with which the **E911** listing can be associated. *See* NY Decl. ¶ 7 n.6 (and same paragraph/note in other MSA declarations); Lew/Wimsatt/Garzillo Reply Decl. ¶ 16n.9.

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A number of commenters argue that, even if cable operators make service available to all or most homes throughout the MSAs, forbearance is premature because these cable operators have not yet captured significant enough market share.<sup>19</sup> But in previous forbearance proceedings such as this one, the Commission has rejected market share as a primary indicia of competition, and has instead relied on “facilities coverage” of cable voice services. *Anchorage Forbearance Order*, ¶¶ 31-34; *see Omaha Forbearance Order*, ¶ 62. In numerous other proceedings, the Commission has likewise held that, particularly in a dynamic industry like this one, historic measures of static market share are not especially meaningful in the competitive analysis.”

This approach is particularly appropriate here given the rapid rate at which cable companies in the six MSAs are adding customers. *See* Table 3, *infra*. This is not a situation where service is widely available, but some question remains whether consumers will actually purchase the service. To the contrary, as shown below, consumers in the six MSAs are purchasing cable voice services in large and increasing

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<sup>19</sup> *See Broadview et al.* at 24; *Comptel* at 16-17; *Sprint* at 9; *NASUCA* at 14.

<sup>20</sup> *See Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶ 74 (2005) (“*Verizon/MCI Order*”) (market share analysis “may misstate the competitive significance of existing firms and new entrants.”); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent To Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21522, ¶ 148 (2004) (“the presence and capacity of other firms matter more for future competitive conditions than do current subscriber-based market shares.”); *Price Cap Performance Review for Local Exchange Carriers*, Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197, 11 FCC Rcd 858, ¶ 143 (1995) (any analysis of “the level of competition for LEC services based solely on a LEC’s market share at a given point in time would be too static and one-dimensional.”).

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numbers. Cable therefore imposes significant competitive discipline on Verizon, regardless of the number of customers that cable companies may currently be serving. In any event, the evidence shows that cable companies are quickly gaining significant market share.<sup>21</sup>

In the *Omaha Forbearance Order*, the Commission relied on E911 listings data as a “directional surrogate” for the number of access lines served by facilities-based competitors such as cable operators. *Omaha Forbearance Order* ¶¶ 29, 58 n.152. The Commission analyzed E911 listings only for residential customers, however, *see id.* ¶ 28, even though this understates facilities-based competition in the mass-market because it excludes the small business customers that the Commission also has defined within this segment, *see id.* ¶ 28 n.78.<sup>22</sup> According to E911 listings data as of the end of December

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<sup>21</sup> NASUCA and the City of Philadelphia claim that cable and other intermodal competitors don’t compete for basic local service, only packages of service, and that there are many customers (such as poor residents) for whom this competition is unavailable. *See* NASUCA at 3, 52-60; City of Philadelphia at 13-14. The commenters fail to provide any evidence to support a correlation between low income and the availability of competitive alternatives. In fact, studies show little correlation between income and cable penetration. *See* George Ford *et al.*, *Phoenix Center Policy Paper No. 22: The Consumer Welfare Cost of Cable “Build-out” Rules*, at 3 n.3 (Jan. 2007) (citing sources that survey relevant literature). Moreover, the availability of packages of services disciplines the prices for all offerings, including those sold on a stand-alone basis. And to the extent that certain residents can’t afford basic service, there is Lifeline and other subsidy programs that offer assistance.

<sup>22</sup> While some competitors complain that Verizon has not provided E911 data for small business customers, *see* Broadview *et al.* at 28-29; ACN *et al.* at 22, the Commission has held that “[d]ue to the[] similarities between the kinds of services that residential and very small business customers purchase, as well as how carriers market and provide service to them, we find that the economic considerations that lead to the provision of service to a residential customer are similar to the economic considerations that lead to the provision of service to a very small business customer,” *Omaha Forbearance Order* ¶ 28 n.78. The Commission therefore concluded that, even if very small businesses were

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2006, the number of residential subscribers that cable operators serve in the three MSAs for which Verizon had data to compare grew by [Begin Confidential] [End Confidential] percent since December 2005 alone. *See* Table 3; Lew/Wimsatt/Garzillo Reply Decl. ¶ 11, Table 6. As noted above, Verizon no longer has access to current E911 data for portions of the Pittsburgh, Providence, and Virginia Beach MSAs.

[Begin Highly Confidential]

[End **Highly** Confidential]

Statements of cable operators provide further confirmation that their subscriber totals are rising rapidly. For example, in February 2007, Comcast reported that it was

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omitted from residential access line counts, “this omission would have only a negligible effect on our analysis of this market.” *Id.*; *see also Qwest 272 Forbearance Order* ¶ 33 n.98 (“An analysis of market shares of residential customers is likely to accurately represent an analysis of market shares for the entire mass market because residential customers and small businesses have similar patterns of demand, are served primarily through mass marketing techniques, purchase similar volumes and communications services, and would likely face the same competitive alternatives within a geographic market.”).

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adding an average of more than 32,000 customers per week,<sup>23</sup> and that it is now “significantly ahead of our plan to reach 20% penetration [of Comcast Digital Voice phone service] by the end of 2009.”<sup>24</sup> “The momentum our voice product has experienced since it was launched is simply staggering,” noted Comcast’s senior vice president and general manager for voice services.<sup>25</sup> Time Warner reported in February 2007 that it was adding an average of 15,000 voice customers each week.” In its comments here, Time Warner Cable states (at 4-5) that its subscribers to Digital Phone service are “growing rapidly,” that this service “has been a remarkable success,” and that its “overall voice service penetration to serviceable homes” was already close to 10 percent as of year-end 2006. In February 2007, Cablevision reported that, as of year-end 2006, it was adding an average of more than 8,000 voice subscribers each week.”

Finally, although the issue has already been briefed and is subject to pending motions, several commenters rehash their claims that Verizon’s submission of E911

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<sup>23</sup> See Comcast Press Release, *Comcast Reports 2006 Results and Outlook for 2007* (Feb. 1, 2007).

<sup>24</sup> Thomson StreetEvents, *CMCSA – Q4 2006 Comcast Corporation Earnings Conference Call*, Conference Call Transcript at 8 (Feb. 1, 2007) (statement of Comcast Corp. COO and President, Comcast Cable Communications, Steve Burke).

<sup>25</sup> Comcast Press Release, *Comcast Passes Its Two Million Comcast Digital Voice Customer Milestone* (Mar. 1, 2007) (citing Cathy Avgiris).

<sup>26</sup> See Time Warner Inc. Press Release, *Time Warner Inc. Reports Results for 2006 First Year and Fourth Quarter* (Jan. 31, 2007); Time Warner Inc. Press Release, *Time Warner Inc. Reports Third Quarter 2006 Results* (Nov. 1, 2006).

<sup>21</sup> See Cablevision News Release, *Cablevision Systems Corporation Reports Fourth Quarter and Full Year 2006 Results* (Feb. 27, 2007).

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